THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.2101 of 1997

% 13.03.2007

Between:
K.Sadanandam

…Petitioner

And

The State of Andhra Pradesh,
Rep. By its Secretary to Government, Hyderabad
And others.

…Respondents

! COUNSEL FOR Petitioners: Sri P. Govind Reddy

^ COUNSEL FOR RESPONDENTS: G.P. for Law and Legislative Affairs for Respondents 1 and 2

Sri P.V. Sanjay Kumar for R-3

< Gist:

> Head Note:

? CITATIONS:

1) 2001 (6) ALD 679 (F.B.)
2) (1979) 4 SCC 701
3) (1988) 3 SCC 144
4) (1991) 1 SCC 212

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THE HON'BE MR JUSTICE L. NARASIMHA REDDY

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JUDGMENT:

The appointment of Additional Public Prosecutor in the Court of I Additional District and Sessions Judge, Ranga Reddy District, has somehow fallen to rough weather. Three and half years have elapsed, since the steps, in accordance with Section 24 of Cr.P.C. were initiated for the appointment, but it could not fructify.

The office fell vacant with the expiry of the term of the previous incumbent. In exercise of power under Section 24 of the Cr.P.C., and instructions contained in G.O.Ms.No.187, dated 6.12.2000, the District Collector, the 2nd respondent herein, prepared a panel of seven names, and forwarded the same to the

1st respondent, on 18.9.2003. The 1st respondent opined that the panel must consist of 5 names only, and accordingly returned it with the directions to the 2nd respondent to send fresh panel. In compliance, the 2nd respondent sent a panel of five names, on 5.8.2004. One Ch. Ravinder Rao, Advocate, whose name figured in the first panel, but was missing in the second panel; filed W.P.No.19246 of 2004. Even while that writ petition was pending, the

1st respondent took the view that the panel must have contained a name of S.C. candidate. On this basis, he required the 2nd respondent to forward another panel. A third panel came to be prepared, on 11.10.2004. The 1st respondent found a new ground to return this panel also. The Court of I Additional District and Sessions Judge, was re-designated as Metropolitan Sessions Judge, Cyberabad. In the mean while, W.P.No.19246 of 2004 came to be allowed, and the 1st respondent was directed to consider the first panel, dated 18.9.2003. Writ Appeal No.1156 of 2005 was filed by one of the aggrieved candidates. Through its judgment dated 4.10.2005, the Division Bench took the view that, having regard to the developments, that have taken place up to that date, respondents 2 and 3 must prepare a fresh panel within one month. Writ Petition and Writ Appeal were concerned with the appointments of Public Prosecutors, to some other Courts also, in the same district.

In compliance with the directions issued by the Division Bench, the 2nd respondent forwarded a fresh panel dated 11.11.2005. Consistent with its approach to the matter, the

1st respondent insisted that a different panel be forwarded, and accordingly, a new set of names, being the fifth in the series; was forwarded on 9.6.2006. This gave rise to filing of W.P.No.8973 of 2006, by one Sri Ravinder. In that writ petition, the 1st respondent filed a counter affidavit, taking the stand, that they would act upon the panel dated 11.11.2005 (the 4th panel) and not the 5th panel. However, through letter, dated 30.12.2006, the 1st respondent directed the 2nd respondent to send a fresh panel, urgently. The

2nd respondent, in turn, requested the 3rd respondent, the District and Sessions Judge, to prepare a fresh panel. It is in this background, that

a 6th panel dated 11.1.2007 came to be prepared and forwarded to the 1st respondent. The petitioner challenges the same. He contends that in the whole episode, public interest was disregarded and the procedure under Section 24 of the Cr.P.C., was subordinated to personal whims and fancies.

The 1st respondent filed a counter affidavit, disclosing the reasons that warranted for preparation of the sixth panel. The developments that have taken place up to their undertaking, given to this court to the effect that the panel dated 11.11.2005 would be acted upon; are admitted. The justification pleaded by the 1st respondent for preparation of the 6th panel, dated 11.1.2007 is that, one of the parties to Writ Appeal No.1156 of 2005, filed Contempt Case No.1128 of 2006 alleging non-compliance with the directions issued in the Writ Appeal, and during the course of hearing of the Contempt Case, an observation was made by the Court, that the 1st respondent, who was required to be present in the Court, must see that the persons who filed writ petition, writ appeal, or contempt case, must not be appointed as Additional Public Prosecutor, for the post in question. It is stated that, out of the five names contained in the 4th panel, three candidates have instituted one proceeding or the other, and thereby the necessity had arisen, to call for a fresh panel.

The 3rd respondent had also filed a detailed counter affidavit, narrating the various steps, and stages in the matter, commencing from preparation of the first panel.

Sri P. Govind Reddy, learned counsel for the petitioner submits that the only basis pleaded by the 1st respondent for calling a fresh panel is not evident from the order of this Court in C.C.No.1128 of 2006. He contends that, disqualification of a person from being

considered for appointment as Public Prosecutor, on the sole ground that he had approached this Court, would be subversive of the very concept of Rule of Law. He submits that the right to avail the judicial remedies is one of the important fundamental rights, and an attempt to exercise the same cannot result a penalty or deprivation. He has placed reliance upon the judgments of this Court and the Supreme Court.

Learned Government Pleader for respondents 1 and 2, submits that the observations made by this Court, that too, in contempt case, cannot be ignored, and by calling fresh panel, the 1st respondent had only implemented the directions of this Court. He submits that the petitioner does not have any right to insist that any particular panel, be acted upon.

Sri P.V. Sanjay Kumar, learned counsel for the 3rd respondent, on the other hand, submits that at the level of the 3rd respondent, every step was taken in accordance with Section 24 of the Cr.P.C., and no decisive role can be attributed to the 3rd respondent, in this regard.

It has already been pointed out that, as many as six panels came to be prepared and forwarded to the 1st respondent for the appointment of Additional Public Prosecutor, to the 3rd respondent Court. Whatever be the legality or otherwise of the 1st three panels, that were forwarded, till the matter came to be considered by the Division Bench, in Writ Appeal No.1156 of 2005, the issue had assumed, almost finality with the preparation of 4th panel, dated 11.11.2005, in compliance with the directions issued by the Division Bench of this Court. The 1st respondent did make an attempt, to deviate from this panel, but soon after the matter landed in this

Court, with the filing of Writ Petition No.8973 of 2006, it retraced its steps. A representation was made before this Court, that the panel dated 11.11.2005 alone would be considered. Then came a turning point, in the matter.

C.C.No.1128 of 2006 is filed by one Mr.T.Premanandam, Advocate. His grievance appears to be, in relation to appointment of Public Prosecutor, to a different Court. The order in writ appeal 1156 of 2005 related to appointment of Public Prosecutors, to eight Courts. In the contempt case, the 1st respondent was directed to appear. It is stated that during the course of hearing, an observation was made by the Division bench, to the effect that the names of the Advocates, who have instituted proceedings, assailing the panels, must not be considered for appointment. However, the same does not find place in the order, that was passed in the Contempt Case. The order reads as under:

> "It is stated by learned Government Pleader that out of eight posts of Public Prosecutors, seven posts have already been filled up and orders have been issued today. The appointment to the remaining posts is under process and the same will be completed within two weeks.
>
> In this view of the matter, we feel that the order dated 04-10-2005 passed by this Court in Writ Appeal No.1156 of 2005 has been substantially complied with.
>
> Hence, the Contempt Case is closed".

There is no reason to believe that the statement made by the 1st respondent in the counter affidavit, that the Division Bench made the observation to the effect that the candidates who have approached this Court must not be considered for appointment; is not correct. Further, the 1st respondent cannot be found fault with, for calling for a fresh panel, on finding that three of the five persons have instituted, one proceeding or the other. An observation made by the Division Bench

in a Contempt Case would have its own impact on the person, who figured as a contemnor and who was directed to appear before the Court. But when the ultimate proceedings are tested, on the touchstone of settled principles of law, different connotations are bound to arise.

Howsoever justified the 1st respondent may be, in calling for a fresh panel, his attempt to disqualify the persons, whose names figured on the panel, on the sole ground that they instituted proceedings before this Court; cannot be countenanced in law. The discussion on this aspect must start with a note, that the observation does not find place in the order passed by this Court in the Contempt Case. Even if one is to go to the extent of ascribing enforceability to the casual or oral observations, made during the course of hearing of a case, the consequences that flow from the implementation thereof, must not result in deprivation or infraction of the rights of those, who are not parties to it; particularly, when that was not the issue before the Court. From the order passed in Writ Appeal No.1156 of 2005, it is evident that this Court wanted to discourage the canvassing of work, by the advocates, in the context of appointment of public offices, such as Public Prosecutors.

Correctness, legality and propriety of the practice of inviting applications by the District and Sessions Judges, for preparation of panel under Section 24 of Cr.P.C., was doubted by several High Courts. In fact, the first panel in the present case came to be prepared on the basis of the applications invited by the 3rd respondent. The correctness of such a procedure, was examined by a Full Bench of this Court in ***B.Rajeswar Reddy v. K. Narasimha Chari***[1]***.*** After making extensive reference to the decided cases, the Full Bench held that no

exception can be taken to such a procedure. It was opined that it is not violative of the legal ethics or professional norms, and at the most, would enable the District Judge, to ascertain the willingness of the candidates, intending to the appointment, and the ultimate discretion resting with him.

Challenge to the proceedings, initiated under Section 24, or for that matter, those relating to the appointment to posts of other law officers, in the hierarchy of Courts, is not something new or strange. Time and again, the Supreme Court held that there exists a substantial element of public purpose, and public interest in such matters. The Constitutional Courts never hesitated to adjudicate such matters and to ensure that the appointments to such offices take place in accordance with law.

In ***Mundrika Prasad Sinha v. State of Bihar***,[2] the Supreme Court dealt with the appointment to the office of a Government Pleader, as defined under sub-section (7) of Section 2 C.P.C. It was held that, it is a public office and that the Government shall not act on political and other extraneous considerations, while appointing law officers, since that would not only tell upon the legality of the action but also be subversive of the rule of law itself. In ***Mukul Dalal v. Union of India***[3], the Supreme Court held that the Public Prosecutor, is a public office, having regard to the primacy given to this office, under the Cr.P.C.

In ***Shrilekha Vidyarthi v. State of U.P.***,[4] the Supreme Court repelled the contention of the State, that appointment of a counsel, by the Government, be it, as Government Pleader or Public Prosecutor, is only a professional engagement comparable to the one, between a private client and his lawyer, and that the discretion of the Government, in this regard, cannot be subjected to judicial review. The proposition

was held to be so settled, that the Supreme Court did not feel it necessary to deal with it elaborately, and rejected the contention with the following observation:

> **Para 18**: "The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or unreasonableness or irrationality, once Article 14 is attracted, is sufficient to invalidate the impugned circular as indicated later. We need not, therefore, deal at length with the scope of judicial review permissible in such cases since several nuances of that ticklish question do not arise for consideration in the present case".
>
> **Para 19**: "Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter".

The Supreme Court held that even assuming that the relation between the Government and an Advocate, in such cases, is contractual in nature, the State action can be tested on the touchstone of Article 14 of the Constitution of India.

The purpose of making reference to these decisions is to drive home the point, that the acts and omissions of the State, in the matter of appointment to the posts of Public Prosecutors or Government Pleaders, are as amenable to judicial review, as any other administrative or *quasi judici*al action. A citizen has an independent right to avail Constitutional remedies. If one is to be disqualified from being considered for appointment to a Public Prosecutor, on the sole ground that he had approached this Court, in exercise of his legal or fundamental right, to judicial remedies, it would lead to subversion of the very Rule of Law, and denial of rights, guaranteed under the

Constitution. No wing of the State, much less the judiciary, can subscribe to the view, that a citizen would forego his right, on the sole ground that he approached a Court, to enforce such right. If that takes place, a situation would arise, where the Court is prone to be known, not as the Protector, but the Destroyer of the rights.

There may be situations, where the citizens invoke the jurisdiction of the Court on trivial issues, and bring about vexatious litigation, costing the Court, in terms of its limited time and resources, at its disposal. Instances are not lacking, where the displeasure of the Courts is expressed, and the parties are penalized, for their irresponsible acts, such as by imposing costs or denying a part of the relief, which he was otherwise entitled to. But, the mere fact that a person has instituted proceedings, seeking redressal; cannot lead to a situation of his taking away the rights, by the Courts themselves.

Howsoever relevant the observations made by the Court, during the course of hearing, may be; when it comes to the question of implementation or execution, what becomes relevant is, the mandate contained in the judgment. This becomes particularly so, when implementation of the observations would lead to denial of rights of others.

From the counter affidavit filed by the 1st respondent, it is evident that the sole basis for the action for calling a fresh panel is, an observation made by the Court, during the course of hearing of the Contempt Case. From the order passed in the Contempt Case, it is not evident that any specific directions were issued in the writ appeal were in any way altered. The said direction was carried out by preparing a panel by the 2nd respondent on 11-11-2005. The matter has already been delayed. The 1st respondent must take action forthwith, to appoint Additional Public Prosecutor, on the basis of the panel dated

11-11-2005.

Hence, the Writ Petition is allowed, and the 1st respondent is directed to appoint the Public Prosecutor, on the basis of the panel dated 11-11-2005, within three weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.13-03-2007.

Note:
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[1] 2001 (6) ALD 679 (F.B.)
[2] (1979) 4 SCC 701
[3] (1988) 3 SCC 144
[4] (1991) 1 SCC 212